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June 9, 1999

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VIA FEDERAL EXPRESS

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

Re: Skinner Landfill

Dear Ms. Estes:

As you may be aware, The Cincinnati Enquirer entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing settlement of Plaintiff's claims regarding the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between The Cincinnati Enquirer and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is The Cincinnati Enquirer's understanding that EPA, Region V has now determined what information it will order to determine that The Cincinnati Enquirer qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

Sherry Estes, Esq.
May 27, 1999
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Accordingly, I am enclosing the information requested by EPA for The Cincinnati Enquirer. I believe that this information amply demonstrates that The Cincinnati Enquirer is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. The Cincinnati Enquirer understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by The Cincinnati Enquirer in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, The Cincinnati Enquirer does not acknowledge any liability for response costs at the Skinner Site. Furthermore, as we have previously discussed, you have indicated that The Cincinnati Enquirer and the other settling de minimis defendants need not otherwise respond to the Special Notice letters previously issued by EPA.

In order to ensure that The Cincinnati Enquirer is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, The Cincinnati Enquirer strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 1229(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely yours,

GRAYDON HEAD & RITCHEY



A. Christian Worrell, III

ACW/kaw

cc: The Cincinnati Enquirer

Cincinnati Enquirer

Settlement Amount: \$159,378.53

Excerpt from Allocator's Preliminary Report:

The Enquirer is in the business of publishing and printing a daily newspaper. It had a facility at 617 Vine Street, Cincinnati from the late 1930s until approximately 1980. Around that time, the operation relocated to a facility at 1531 Western Avenue, which it has occupied since 1979. The Enquirer also has a warehouse facility at 1440 W. 8th St. and other locations within a 75-mile Site radius that the company claimed did not generate waste other than typical office or household waste.

The company has used offset printing since December 1979. It generated water-based ink wastes and very small quantities of Safety Kleen cleaning solution and "blanket wash." Current waste ink quantities are approximately 20 - 25 drums per month, but in earlier years especially before the late 1970s, it would have been less because color ink usage was minimal. Waste ink is generated from flushing lines when changing colors.

The Enquirer explained that, for a time, inks were petroleum-based. Mineral spirits were used for clean-ups of these inks. There was no discussion of any other wastes generated at any of this company's facilities in the original questionnaire response.

In the nexus materials, there were allegations that the Enquirer's ink wastes were sent to the Site. In response, the Enquirer says that its waste inks were returned to suppliers in earlier years and later were collected by Safety Kleen. Documents submitted by the Enquirer, in fact, showed that inks were recycled with suppliers but these documents only cover a portion of 1985 and the years 1989 - 1991.

The Enquirer noted in its response that there is an Enquirer Printing Co. which has been in Cincinnati for over 70 years and which could have been confused with the newspaper.

In a follow up response, the Enquirer provided me with a newspaper article that it had found that discussed the collection of its inks. The article discusses a plan by Edwin Miller to burn waste inks and other liquid wastes in a home furnace. Previously, Mr. Miller had been landfilling the waste at a Kentucky landfill according to the article. The article mentions two of his waste "clients," The Cincinnati Enquirer and the Cincinnati Post. Mr. Miller was contacted by the Enquirer, I was told, and confirmed the article's statements about his clients. He also indicated that when he purchased his waste hauling business from a person named Russell Maffner in 1976, the Enquirer was a customer. Mr. Miller said that Mr. Maffner was deceased.

David Jividen testified that he recalled seeing some newspaper racks at the Site that had the Enquirer name on them. There were no more than ten of them and a couple of them said "Post."

Elsa Skinner testified that one company did dump ink that had something wrong with it. Her husband told her that it was "the paper company, the Cincinnati Enquirer." E. Skinner Depo., p. 521. Her time reference was unclear except that it was some time ago.

Ray Skinner testified with respect to the Enquirer a number of different times. The Enquirer's position paper juxtaposes the testimony to attempt to demonstrate that it is contradictory and unreliable. It noted that, at one point, Ray Skinner said the Enquirer material came to the Site on blue trucks. The Enquirer has also provided me with an affidavit from an employee, a mechanic, who started with the Post in 1971. He explained that the Enquirer did not have blue trucks. Based on information given him by a former driver for the Post and Times Star and Enquirer, he said that the Times Star had green trucks with black fenders and white letters which were used until 1958. The Times Star was then merged into the Post. The Post had red trucks until 1958. In 1958, the Post bought new trucks that were red with white lettering. In 1963, the Post bought trucks that were midnight blue with white lettering. In 1973, the Post changed to midnight blue trucks on which the bottom three feet of the body were painted sky blue. The truck contained the language, "Cincinnati's Largest Daily Newspaper."

The affiant said that to the best of his knowledge the Enquirer did not have a blue stakeside truck, but his knowledge does not go back far enough to be very meaningful in the context of this matter. He said that the Times Star may have had some green stake body trucks, but the basis of this knowledge is not clear to me; I assume that he saw them. When later questioned about the blue trucks, Ray Skinner said he was not sure of the type of truck. R. Skinner Depo., p. 432.

Waste-In Amount. I heard and have read and reread Mr. Skinner's testimony (p. 41, 425-27, 431-32, 435, 438-40). In the overall reading of his testimony and taking into account Elsa Skinner's testimony, I conclude that the Enquirer did dispose of ink wastes at the Site in the early 1960s, a time period covered by Ray Skinner's testimony. In the balancing of the evidence that I feel is appropriate with respect to the Enquirer, I have further decided to interpret the evidence as establishing that the Enquirer should be allocated 45 drums of inks, or 2,475 gallons of ink waste. I derived this total by discounting Ray Skinner's recollection of seven to eight visits down to three visits and using the low end of his drum count (15). In light of this determination, I have elected not to assign the Enquirer any further waste-in amount beyond these 2,475 gallons.

Excerpt from Allocator's Final Report:

The Cincinnati Enquirer ("Enquirer") submitted its comments to the Allocator's Report on February 17, 1999. The Enquirer felt that its allocation of forty-five drums or two thousand four hundred seventy-five gallons was excessive. The Enquirer believed that the Allocator: (a) failed to adequately consider evidence offered by the Enquirer which provided a pattern by where it disposed of its waste inks and solvents at other facilities; (b) failed to adequately consider evidence showing the Enquirer did not possess vehicles as described by Ray Skinner; (c) relied almost exclusively on the testimony of Ray Skinner, who the Enquirer felt was not credible; and, (d) failed to reduce the Enquirer's share to reflect amounts properly allocable to the Cincinnati Post, the Cincinnati Times Star and/or the Cincinnati Post and Times Star.

The Enquirer said it offered evidence showing a history of recycling its waste inks, as early as the 1970s, and nothing in this pattern suggested that it hauled its waste to the Site or used the Site at any other period. The Allocator concluded that the Enquirer used the Site in the 1960s, but the Enquirer claimed there is no evidence suggesting that its practice in the 1960s was any different than in the 1970s, 1980s or 1990s. Self-hauling has never been a logical option for the Enquirer, it was argued. Given the Site's distance from the Enquirer, it felt that the disposal practices described by Ray Skinner were not plausible.

The Enquirer had offered an affidavit of Tom Sargent who stated the Enquirer did not own or operate blue stake bodied trucks, blue trucks, or stake bodied trucks of any color, while the Cincinnati Post did use these types of trucks. The Enquirer pointed out that Ray Skinner repeatedly referred to the entity hauling waste to the Site as the "Post and Times Star." R. Skinner Depo., p. 422-425, 433, 435, 438.

Although the Enquirer said it took "great pains to point out the inconsistencies in Ray Skinner's testimony," it felt that the Allocator relied exclusively on the testimony in assigning it the responsibility for 45 drums or 2,475 gallons of ink waste. It felt it was apparent that Mr. Skinner could not distinguish between the Cincinnati Enquirer, the Cincinnati Post and the Cincinnati Times Star, and the Cincinnati Post and the Times Star. The Enquirer felt that the Allocator failed to use his authority to reduce the Enquirer's allocated share to reflect amounts properly allocable to the Cincinnati Post, The Cincinnati Times Star and/or the Cincinnati Post and Times Star.

The Enquirer concluded by saying that the Allocator's general approach was a "sound one" and while the orphan share may present a challenge, it should form a framework for settlement. However, it felt its share should be eliminated or reduced by an amount properly allocable to others.

I have considered the Enquirer's thoughtful comments. The Preliminary Report acknowledged the difficulties posed by the different names used by Ray Skinner and took them into account in deriving a waste-in amount. I remain comfortable that the analysis followed with respect to the Enquirer was a reasonable one within the framework of a consistent interpretation of the evidence in this limited record.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
CINCINNATI ENQUIRER	0	2475	372906	0.0000%	262252	0.9437%	0.00%	0.19%			0.18875%